



Application No. 10/822,051
Art Unit: 3728
Appeal Brief
May 31, 2007

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: RONALD JOHN ROSENBERGER
Application No.: 10/822,051 Art. Unit: 3728
Filing Date: 04/10/2004 Examiner: John T. Kavanaugh

Title: **SCENTED SHOE SOLES**

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(Name of applicant, assignee, or Registered Representative)

(Signature)

5/31/07

(Date of Signature)

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APPELLANT'S BRIEF ON APPEAL UNDER 37 CFR 41.37

Dear Sir:

In response to the Final Office Action dated March 27, 2006, for which an Amendment and Response was filed June 27, 2006 as well as a Notice of Appeal also filed June 27, 2006, and for which a Petition For Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b), statement and fee of \$750 under 1.17(m) for small entity are filed herewith, and which further includes the Appeal Brief fee of \$250 under 37 C.F.R. § 1.17(c), Applicant-Appellant submits the following Brief on Appeal under 37 CFR 31.37 with the following comments.

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Real Party in Interest (37 CFR 41.37(c)(1)(i))

The Applicant-inventor, Ronald Rosenberger is the owner of entire interest in the above-identified patent application as the sole Applicant, and which interest has not been assigned.

Related Appeals and Interferences (37 CFR 41.37(c)(1)(ii))

There are no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal and accordingly there are no decisions to provide copies herewith.

Status of Claims (37 CFR 41.37(c)(1)(iii))

Pending claims 1-4, 6 and 15, including independent claim 1, all stand rejected under 35 USC 102(b) or 103(a) as anticipated or obvious over the cited references.

Status of Amendments (37 CFR 41.37(c)(1)(iv))

The Examiner apparently entered an Amendment under 37 CFR 116, filed June 27, 2006, in response to the final Office Action of March 27, 2006, as indicated in an Advisory Action of record but not received by Applicant in the mail. The Examiner maintained his rejections as indicated in the Advisory Action.

Summary of Claimed Subject Matter (37 CFR 41.37(c)(1)(v))

The presently claimed invention is specific to a shoe comprising an exterior shoe sole comprising at least one scented plug or insert (as supported, e.g., at pages 3-7 of the specification). The following table provides independent claim 1 and its corresponding support in the specification.

<u>Independent claim</u>	<u>Specification Support</u>
1. A shoe, comprising at least one exterior sole comprising at least one receptacle comprising at least one plug or insert comprising at least one desired scented	p. 3-7: The present invention involves scenting the shoe's sole material/formulation compound(s) with at least one novelty scent or fragrance. The term "novelty scented shoes" is herein defined as shoes comprising

<p>or fragrant compound, wherein</p> <p>a. said plug or insert gives off a desired aroma when said shoe sole is at rest;</p> <p>b. said plug or insert gives off a desired aroma when said shoe sole is in normal use due to friction, heat buildup, or wear; or</p> <p>c. said plug or insert gives off a desired aroma when normal wear of said shoe sole exposes fresh surface area of said plug or insert,</p> <p>and wherein said desired aroma comprises a distinctive feature of said shoe.</p>	<p>scented sole material/formulation compound(s).</p> <p>In many scent related disclosures not having anything to do with the present invention, scent is used to mask offensive odors, such as room deodorizers. This is not the case with the present invention, where the unique aroma due to the novelty scent or fragrance added to the material/formulation compound is a salient, distinguishing, and marketable feature of the shoe comprising the novelty scented shoe sole, and may comprise any desired novelty scent or fragrance. The shoe comprising the novelty scented shoe sole gives off a unique aroma when the shoe is at rest, and when the shoe is in use. Friction, heat buildup, and wear due to use is an effective means of releasing the aroma; and wear of the novelty scented shoe sole serves to expose fresh surface area of the novelty scented material/formulation. Wear and tear of a given shoe has the greatest impact on the sole of the shoe, and it is this wear and tear aspect that enable special dynamics of the disclosed sole to emerge. For purposes of this disclosure, the term "novelty scented shoes" refers to shoes comprising novelty scented shoe soles.</p>
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Grounds of Rejection to be reviewed on Appeal (37 CFR 41.37(c)(1)(vi))

(Claims 1-4, 6, and 15 are pending on Appeal).

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hartung, et al. (US 4,257,176).
2. Claims 1, 6-7, 9, 11, 14, 15, 17, 18, 19-21 are rejected under 35 U.S.C. 102(b), as being anticipated by Laughlin, et al. (US 5,732,485).
3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '485 in view of Maples (US 5,024,008).
4. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of Williford (US 5,261,169).
5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin '485 in view of O'Brien (US 5,039,243).

Arguments (37 CFR 41.37(c)(1)(vii))

All of the claims, including independent claim 1, are argued together. In the response dated June 27, 2006, to the Final Office Action dated March 27, 2006, from which this appeal is taken and to more particularly recite the presently claimed invention, Applicant amended claims 1-4, 6, and 15 to cover a shoe comprising an exterior shoe sole comprising at least one scented plug or insert (as supported, e.g., at pages 3-7), and canceled claims 5, 7-14 and 16-21, solely to further prosecution and to reduce issues on appeal, and to more particularly recite what Applicant regards as his invention.

Argument 1 under (37 CFR 41.37(c)(1)(vii):

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hartung, et al. (US 4,257,176). Hartung, et al. disclosed, per the abstract: “An insole for footwear has odor masking or malodor counteractant material dissolved, trapped or encapsulated in a somewhat resilient resin coating through which it will progressively migrate or bleed under application of foot loads, foot perspiration and elevated foot temperatures to the surface of the coating to be released into the footwear to mask or counteract foot odors.”

Applicant has amended claim 1 to recite a shoe comprising an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7. Hartung ‘176 is an insole that is installed in the interior surface of a shoe where the user’s foot resides, and comes in direct contact with the foot of the shoe wearer. Unlike the present invention, Hartung does not come in direct contact with indoor and outdoor ground surfaces such as pavements, floor coverings, etc. An intended purpose for Hartung is “to mask or counteract foot odors”, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the exterior outer sole of the shoe, boot, etc.

Thus, the present invention does not recite, disclose or include insoles, but discloses and claims shoes comprising exterior shoe soles that have scented or fragrant inserts or plugs have a desired aroma. Accordingly, the cited reference fails to disclose each and every element of the present claims.

Furthermore, the present invention “teaches away” from the cited reference with regards to the intended purpose of the use of scent. In Hartung, the primary intended purpose of scent is to mask or counteract foot odors, whereby the present invention teaches away from Hartung in that the primary intended purpose of the scent is as an attractive feature to the shoe wearer that influences the purchasing and wearing of the shoe, and therefore, unlike Hartung, has no relation whatsoever to the addressing or mitigating of foot odor issues.

Accordingly, the present claims distinguish over and teach away from the cited reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

This rejection should be reversed as being in error.

Argument 2 under (37 CFR 41.37(c)(1)(vii):

Claims 1, 6-7, 9, 11, 14, 15, 17, 18, 19-21 are rejected under 35 U.S.C. 102(b), as being anticipated by Laughlin, et al. (US 5,732,485). Laughlin, et al. comprises, per the abstract: "A deodorizer for masking foot and shoe odors through controlled release of fragrance..." whereby said deodorizer is installed in "the interior surface of a shoe", where the user's foot resides, i.e., the insole.

Claims 5, 7-14 and 16-21 were canceled in the response filed June 27, 2006, solely to further prosecution, rendering this portion of the rejection moot. Applicants also amended remaining independent claim 1 to recite an exterior sole to clarify that the present invention does not include or relate to insoles, as fully supported by the present specification, e.g., at pages 3-7.

Laughlin '485, as is Hartung '176 relates to an insole to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the exterior outer sole of the shoe. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe, as presently claimed.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoe soles. Accordingly, the cited reference fails to disclose, teach or suggest each and every element of the present claims.

Furthermore, the present invention “teaches away” from the cited reference with regards to the intended purpose of the use of scent. In Laughlin, the primary intended purpose of scent is to act as “[a] deodorizer for masking foot and shoe odors”, whereby the present invention teaches away from Laughlin in that the primary intended purpose of the scent is as an attractive feature to the shoe wearer that influences the purchasing and the wearing of the shoe, and therefore, unlike Laughlin, has no relation whatsoever to the addressing or mitigating of foot and shoe odor issues.

Accordingly, the present claims distinguish over and teach away from the cited reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

This rejection should be reversed as being in error.

Argument 3 under (37 CFR 41.37(c)(1)(vii):

Claim 2 is rejected under 35 U.S.C, 103(a) as being unpatentable over Laughlin ‘485 in view of Maples. Maples (US 5,024,008) comprises “a rubber overshoe to be worn over a boot worn by the hunter” with an animal “scent dispenser...which is attached to the overshoe for dispensing scent on the ground as the hunter walks” where the animal “scent dispenser is isolated from the boot so that the overshoe and dispenser may be removed from the boot...”. The rubber overshoe, which is *removable*, and is *not inherent* to the boot itself, is not scented, and unlike the present invention which claims normal wear of said shoe sole exposes fresh surface area of said scented material/formulation compound releases a desired aroma, and further in Maples, the “...scent source means includes a sponge and animal lure impregnated therein”. The presently claimed invention further does not include the use of an overshoe with a “sponge dispenser and animal lure impregnated therein” to dispense an animal luring scent.

Additionally, Laughlin fails to teach an exterior outer sole as presently claimed, and the cited references do not teach the combination made by the Examiner, who is using hindsight provided by the present specification.

Applicant respectfully points out that the references in themselves do not suggest or motivate the presently claimed combination, and the Examiner has failed to show how the general knowledge suggests the combination, as required by MPEP 706.02(k) and MPEP 2143.01, which also states that "the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP sections 2143–2143.03." The Examiner has failed to show how the references or the state of the art specifically suggest the presently claimed combination.

MPEP 2143.01 cites "*In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-8 (Fed. Cir. 1998) (the combination of the references taught every element of the claimed invention, however, without a motivation to combine, a rejection based on a prima facie case of obviousness was improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) . . . The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) . . . A statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

More recently, in *KSR v. Teleflex*, 127 S.Ct. 1727 (April 30, 2007), the Supreme Court explained that the Graham factors could be used in determining obviousness.

In 1966, in *Graham v. John Deere Co. of Kansas City*, the Supreme Court provided a framework for applying section 103:

Under s. 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.[*KSR* at 1728; *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 at 17-8.]

The Supreme Court acknowledged that, in creating the TSM test, the CAFC “captured a helpful insight. ... [A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.”[*KSR* at 1741.] The Court went on to state that “[t]here is no necessary inconsistency between the idea underlying the TSM test and the Graham analysis. [*KSR* at 1742.]

The Supreme Court’s discussion of the correct obviousness analysis included the following:

One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims... The question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art. [*KSR* at 1743.]

The Court then turned to a discussion of the person of ordinary skill in the art:

The second error of the Court of Appeals lay in its assumption that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem. ... Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. [*KSR* at 1743-44.]

The Court added “A person of ordinary skill is also a person of ordinary creativity, not an automaton.”[*KSR* at 1744.]

Looking at this obviousness rejection under the Graham factors, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.

In particular the scope and content of the prior art teach that inner soles can be scented to address foot odor according to Laughlin '485 and hunting outer soles can be attached to an animal scent dispenser for the purpose of attracting animals to hunt according to Maples '008. The present invention provides an exterior outer shoe sole that incorporates a pleasant scent that is released upon wear of the shoe and thus provides a completely different function as well as structure from that of the cited art. One of ordinary skill in the art would be taught either to scent inner soles to address foot odor *or* to add an animal scent to a dispenser attached to an outer shoe to attract animals to hunt, where one of ordinary skill would either be a foot inner sole engineer designing deodorants for inner soles *or* an animal scent designer in combination with a hunting outer shoe designer, the result of which would not present any of the functions of the present invention, and which would rely on a different person of ordinary skill in the areas of outer sole engineer and fragrance engineer to add fragrance to the composition of an outer sole of a shoe that was released as a unique aroma as experienced by *the shoe wearer* upon ordinary wear of the shoe, rather than as an attracting scent experienced by *the hunted prey* said shoe wearer was pursuing.

As discussed earlier, Laughlin '485 "teaches away" from the present invention with regards to the intended purpose of the use of scent. Additionally, in Maples '008, the primary intended purpose of the use of scent is greatly different than the present invention. Maples teaches that the primary intended purpose of the use of scent is as a lure for prey, whereby the present invention "teaches away" from Maples in that the primary intended purpose of the scent is as an attractive feature to the shoe wearer that influences the purchasing and the wearing of the shoe.

Furthermore, Laughlin '485 and Maples '008 not only "teach away" from the present invention with regards to the intended purpose of the use of scent, but also "teach

away” from each other with regards to the intended purpose of the use of scent! Laughlin teaches where the primary intended purpose of scent is to act as “[a] deodorizer for masking foot and shoe odors”, whereby Maples teaches that the primary intended purpose of the use of scent is as a lure for prey.

Accordingly the application of the Graham factors, as well as how the cited references “teach away” from the present invention with regards to the intended purpose relating to the use of scent, as well as how the cited references “teach away” from *each other* with regards to the intended purpose relating to the use of scent, results in the inescapable conclusion that the presently claimed invention is not obvious over the cited references, which one of ordinary skill would not and could not combine to make obvious the presently claimed invention.

Thus, the present claims distinguish over the cited reference(s), which do not suggest or teach the presently claimed invention of a shoe with an exterior sole with scented plugs or inserts that further comprise a pheromone and the combination is not suggested by the cited references without using hindsight of the present specification. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

This rejection should be reversed as being in error.

Argument 4 under (37 CFR 41.37(c)(1)(vii):

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) are being unpatentable over Laughlin ‘485 in view of Williford. Williford (US 5,261,169) discloses where the “...article is a shoe insole and the active composition is an anti-microbial powder.” Again, the examiner has mischaracterized the reference. In actuality, Williford more closely resembles Laughlin. than the present disclosure in that the insole is installed in the interior surface of a shoe where the user’s foot resides, and comes in direct contact with the foot of the shoe wearer.

An intended purpose for Laughlin and Williford, is to mask or counteract foot odors using a deodorizing/counteracting insole, whereby the present invention has no deodorizing/anti-microbial agent for insoles, but is rather intended to provide a scent to the exterior outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin and Williford for scenting the exterior outer sole of a shoe or boot, as presently claimed.

Looking at this obviousness rejection under the Graham factors, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.

In particular the scope and content of the prior art teach that inner soles can be scented to address foot odor according to Laughlin '485 and foot microbial contamination that causes foot odor or fungus infection by adding an antimicrobial composition to the inner soles of a shoe according to Williford '169. The present invention provides an exterior outer shoe sole that incorporates a unique scent that is released upon wear of the shoe and thus provides a completely different function, as well as structure, from that of the cited art.

One of ordinary skill in the art would be taught either to scent inner soles to address foot odor or to add a microbial powder to the inner sole to address foot odor or infection, where one of ordinary skill would either be a foot inner sole engineer designing deodorants for inner soles *or* an antimicrobial engineer or designer for adding such to an inner sole, which would not present any of the functions of the present invention, and which would rely on a different person of ordinary skill in the areas of exterior outer sole engineering and fragrance engineering to add fragrance to the composition of an exterior outer sole of a shoe that was released as a unique aroma to the shoe wearer upon ordinary wear of the shoe by said wearer (not deodorant or microbial powder in the inner sole to address foot odor or infection).

Additionally, in Williford, the primary intended purpose of any use of anti-microbial powder is greatly different than the smoking compound comprising the present

invention. Williford teaches that the primary intended purpose of the anti-microbial powder is to counteract foot odors, whereby the present invention “teaches away” from Williford in that the primary intended purpose of the smoking compound (sans any anti-microbial agent) is as an amusing and attractive feature to the shoe wearer that influences the purchasing and the wearing of the shoe, and, unlike Williford, has no relation whatsoever to the addressing or mitigating of foot odor issues. Williford further teaches away from the present invention that the anti-microbial powder entails contact with the actual foot of the wearer, whereby the smoking compound of the present invention is triggered by wear and tear of the exterior sole due to direct contact with indoor and outdoor ground surfaces such as pavements, floors coverings, etc., whereby the smoking compound does not have direct contact with the actual foot of the wearer.

Accordingly the application of the Graham factors, as well as how the cited references “teach away” from the present invention with regards to the intended purpose relating to the use of scent, or powder and smoking compounds, results in the inescapable conclusion that the presently claimed invention is not obvious over the cited references, which one of ordinary skill would not and could not combine to make obvious the presently claimed invention.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims scented shoes having scented exterior soles further comprising a smoking compound. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims.

Accordingly, the present claims distinguish over the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

This rejection should be reversed as being in error.

Argument 5 under (37 CFR 41.37(c)(1)(vii):

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laughlin '485 in view of O'Brien. O'Brien (US 5,039,243) discloses fragrance releasing crayons. In the present invention, the colored sole is visible from the *outside* of the shoe as it is worn, whereas with Laughlin '485, the colored scenting means could only be visible from the *inside* of the shoe. There is no suggestion or motivation to combine a reference for scented crayons with deodorizing insoles, such that the combination is improper under the MPEP.

Solely to further prosecution and reduce issues on appeal, claim 5 was canceled in response to the final Office Action.

The only intended purpose for Laughlin '485 is to mask or counteract foot odors using a deodorizing insole, whereby the present invention has no deodorizing aspects for insoles, but is rather meant to provide a scent to the exterior outer sole of the shoe, boot, etc. Additionally, there is no suggestion in Laughlin for scenting the exterior sole of a shoe or boot, as presently claimed, and O'Brien's suggestion for scented crayons in no way makes up for the deficiencies of Laughlin in failing to suggest the presently claimed shoe having scented exterior outer soles. As these references are in no way related, the Examiner only could have used hindsight provided by the present specification to make this combination of references.

Looking at this obviousness rejection under the Graham factors, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.

In particular the scope and content of the prior art teach that inner soles can be scented to address foot odor according to Laughlin '485 and scented crayons according to O'Brien '243. The present invention provides an exterior outer shoe sole that incorporates a unique scent that is released upon wear of the shoe and thus provides a completely different function as well as structure from that of the cited art.

One of ordinary skill in the art would be taught either to scent inner soles to address foot odor or to scent crayons for drawing with an added fragrance, where one of ordinary skill would either be a foot inner sole engineer designing deodorants for inner soles or a crayon designer for adding fragrance to a crayon, which would not present any of the functions of the present invention, and which would rely on a different person of ordinary skill in the areas of outer sole engineer and fragrance engineer to add fragrance to the composition of an outer sole of a shoe that was released as a unique aroma to the shoe wear upon ordinary wear of the shoe by the wearer (not deodorant or microbial powder in the inner sole to address foot odor or infection).

As discussed earlier, Laughlin '485 "teaches away" from the present invention with regards to the intended purpose of the use of scent. Furthermore, Laughlin and O'Brien '243 also "teach away" from each other with regards to the intended purpose of the use of scent! Laughlin teaches where the primary intended purpose of scent is to act as "[a] deodorizer for masking foot and shoe odors", whereby O'Brien teaches that scented crayons function as "a fragrance releasing device" whose scent is obviously *not* intended to mask odors, but rather where the intended purpose of the use of scent comprises an attractive feature to the crayon user that influences the purchasing and use of the scented crayons.

Accordingly the application of the Graham factors, as well as how the cited references "teach away" from each other with regards to the intended purpose relating to the use of scent, results in the inescapable conclusion that the presently claimed invention is not obvious over the cited references, which one of ordinary skill would not and could not combine to make obvious the presently claimed invention.

Thus, the present invention does not recite, disclose, include or suggest insoles, but discloses and claims shoes having scented exterior shoe shoes. Accordingly, the cited references fail to disclose, teach or suggest each and every element of the present claims. Reconsideration and withdrawal of this rejection is requested.

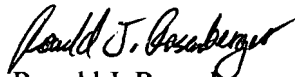
This rejection should be reversed as being in error.

Conclusion

In view of the above arguments and evidence of record, Applicants request that the Examiner's objections and rejections be reversed and the case remanded to the Examiner for allowance.

The Examiner is invited to contact Applicant with any questions or comments.

Respectfully submitted,



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Date: May 31, 2007

CLAIMS ON APPEAL

1. (Previously presented) A shoe, comprising at least one exterior sole comprising at least one receptacle comprising at least one plug or insert comprising at least one desired scented or fragrant compound, wherein
 - d. said plug or insert gives off a desired aroma when said shoe sole is at rest;
 - e. said plug or insert gives off a desired aroma when said shoe sole is in normal use due to friction, heat buildup, or wear; or
 - f. said plug or insert gives off a desired aroma when normal wear of said shoe sole exposes fresh surface area of said plug or insert,and wherein said desired aroma comprises a distinctive feature of said shoe.
2. (Previously presented) The shoe of claim 1, wherein said plug or insert further comprises at least one pheromone.
3. (Previously presented) The shoe of claim 1, wherein said plug or insert further comprises at least one smoking compound.
4. (original) The shoe of claim 1, wherein said plug or insert has a distinctive color that is associated with said aroma of said plug or insert.
5. (canceled).
6. (Previously presented) The shoe of claim 1, wherein said shoe sole further comprises an additional void adjacent to the outside surface of said shoe sole, wherein said void comprises a receptacle that allows for the insertion of at least one additional plug or insert that comprises at least one scent, fragrance, pheromone or smoking compound.
7. (canceled)
8. (canceled)
9. (canceled)
10. (canceled)
11. (canceled).
12. (canceled)

13. (canceled)
14. (canceled)
15. (Previously presented) The shoe of claim 1, wherein said plug or insert further comprises at least one reflective, refractive, sparkling, shining, holographic, jewel-like, pearlescent, fluorescent, or glow-in-the dark visual component, wherein said visual component does not produce light and does not comprise the use of a chemical reaction that produces light.
16. (canceled)
17. (canceled)
18. (canceled)
19. (canceled)
20. (canceled)
21. (canceled)

Evidence Appendix Under 41.37(c)(1)(ix)

NONE.

There is no related evidence under 37 C.F.R. 1.130, 1.131, or 1.132 being filed with this Brief on Appeal.

Related Proceedings Appendix Under 41.37(c)(1)(x)

NONE.

There are no related proceedings pursuant to 41.37(c)(1)(ii).

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